

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
 : Docket #15-cv-1132
SAMUEL DIOS, et al, :
 : Plaintiffs, :
 :
- against - :
 :
PASTA & POTATOES, INC., et al, : New York, New York
 : July 20, 2015
 :
Defendants. :
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PROCEEDINGS BEFORE
THE HONORABLE FRANK MAAS,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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MR. PETER COOPER: -- did not feel well today, Judge. He gave us full authority to resolve this case. We're hopeful and optimistic, Judge.

MR. RICHARD STEER: Tarter, Krinsky & Drogin, LLP, by Richard L. Steer.

THE CLERK: This is a settlement conference in Samuel Dios, et al against Pasta & Potatoes, Incorporated, doing business as Village Lantern, et al.

MR. STEER: Your Honor, before we go on the record, give me a moment, would you?

HONORABLE FRANK MAAS (THE COURT): Yes.

MR. COOPER: Good afternoon, Judge. Peter Cooper for the plaintiff, accompanied by Mr. Vicente Romano Pichon; my assistant, Jeanette Pena, who's been translating throughout the morning and into the afternoon. And not present is Mr. Dios, but we've had full authority to settle on his behalf throughout the day.

MR. STEER: Tarter, Krinsky & Drogin, by Richard Steer, attorneys for the defendants. And with me today are Edward Brady, Nancy Brady, and Carol Brady, the individual defendants.

And we have reached an agreement, your Honor.

THE COURT: Having conferred with both sides, it's my understanding that the case will be dismissed today with

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2 prejudice and without cost on terms that I will outline,
3 and the parties will consent to my jurisdiction for the
4 limited purpose of entering the order of this continuance.

5 The terms of the settlement are confidential, and
6 the record of this proceeding will be sealed except that
7 counsel for either side may order a copy of the transcript.

8 The financial terms are that the defendants will
9 pay the sum of \$22,500, in total, to Mr. Cooper and his two
10 clients, 5,000 of which will be paid on September 15; for
11 the following eight months on the 15th of the month, \$2,000
12 will be paid; and in the last month, \$1,500 will be paid.

13 Obviously, the plaintiffs will both issue or sign, I should
14 say, general releases as against all three defendants.

15 Three of the defendants, namely, the corporate defendant,
16 Edward Brady, and Nancy Brady, will sign a confession of
17 judgment for twice the amount of the settlement, namely,
18 \$45,000. Carol Brady will not sign that confession of
19 judgment. There further will be an undertaking because
20 Mr. Pichon has at times performed services for somebody
21 named Mr. Suarez, who in turn at times has performed
22 services at a construction site where Edward Brady is
23 working; that Mr. Pichon is not an employee of either Edward
24 Brady or his construction company in relation to any work
25 being performed at that site on the Upper East Side where I

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believe a restaurant is being constructed.

MR. STEER: Your Honor, if I may?

THE COURT: Yes.

MR. STEER: And that he's also not an employee of whoever was building that restaurant, the restaurant operator as of this time.

THE COURT: Yes, I'm sure that won't be a problem, correct, Mr. Cooper?

MR. COOPER: Not a problem, Judge; he says he doesn't work there.

THE COURT: And I think those are the essential deal terms. Have I left anything out?

MR. STEER: Your Honor, one thing with regard to the payment, it's actually being made by Pasta & Potatoes and with Brady on behalf of all defendants. But the confession of judgment will be from --

THE COURT: I don't think they care whether I write the check or you write the check or one of the defendants writes the check, the critical issue is that the payment is received. And whether it's Edward Brady or Nancy Brady or Pasta & Potatoes, if a check that clears is not received, then the confession of judgment would come into being.

I'd also suggest, although we didn't expressly discuss it, that there be a five-day notice to cure --

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MR. COOPER: We agreed to that, Judge. Five business days.

MR. STEER: Five business days. We had discussed it between counsel, actually, your Honor.

MR. COOPER: And we will give notice to counsel of any default, upon which they will have -- the defendants will have five business days to cure. The payments should be made payable to Cilenti & Cooper as attorneys for the plaintiffs. We will disburse after, you know, deducting any attorney's fees on a monthly basis, we'll disburse it to the two plaintiffs proportionate to the amount of the alleged unpaid wages. The plaintiffs will hold harmless and indemnify the defendants from any liability or claim for unpaid -- failure to withhold or pay taxes. They will be responsible for their own taxes on these monies.

And the only other thing is that this -- we hope this goes well. This dismissal with prejudice and this general release is conditioned upon these payments being made, of course. The confession of judgment is triggered only if the payments are not made, but we hope not to go down that path, Judge.

THE COURT: And in fact, what I will do is -- and I'll ask my law clerk to correct it -- rather than the 30-day order, I'll make it a 60-day order to ensure that at least the

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first payment has been --

MR. COOPER: We appreciate that, Judge.

THE COURT: -- cleared.

MR. STEER: Can we also just have on the record so if we get a transcript, where the payments should be made, where Mr. Cilenti wants --

THE COURT: I assume the details of that counsel will work out. Let me --

MR. COOPER: One other thing I would like to add, of course, the payments should be delivered to my office. I'll give you my card.

But if, for example, we are forced to enforce this agreement or either side -- if the defendants, of course, have a right to enforce confidentiality -- if either side has to enforce any provisions of this agreement, they should be entitled -- if they prevail, they should be entitled to collect their attorney's fees, as well.

MR. STEER: Your Honor, I have some concerns about that, frankly.

THE COURT: Yes. I think the confession of judgment deals with that, Mr. Cooper.

MR. COOPER: Okay.

THE COURT: I know that your colleague has been translating -- and, I'll add, quite ably, for Mr. Pichon, who

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2 is here. So let me ask, Mr. Pichon, do you understand the
3 terms of the agreement, and are those acceptable to you?

4 MR. VICENTE ROMANO PICHON (Through Interpreter):
5 Yes.

6 THE COURT: Do you understand that you may not
7 discuss the terms of this settlement with anyone other than
8 your accountant, if you have an accountant?

9 MR. PICHON (Through Interpreter): Yes.

10 THE COURT: And do you understand that the
11 defendants will have the right to pursue remedies if you
12 disclose the amount of the settlement to any third parties
13 such as other employees of Pasta & Potatoes?

14 MR. PICHON (Through Interpreter): Yes.

15 THE COURT: And, Mr. Steere, subject to the various
16 bells and whistles we've added in the last few minutes, those
17 terms are acceptable to you?

18 MR. STEER: Yes, your Honor.

19 THE COURT: And, Edward Brady, those terms are
20 acceptable to you?

21 MR. EDWARD BRADY: Yes, your Honor.

22 THE COURT: Nancy Brady?

23 MS. NANCY BRADY: Yes.

24 THE COURT: And Carol Brady?

25 MS. CAROL BRADY: Yes.

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THE COURT: Let me ask that just Edward and Nancy Brady and Mr. Pichon and counsel sign the stipulation of this continuance. You've already said that you have full authority from your other client, Mr. Dios, correct?

MR. COOPER: Yes, Judge.

THE COURT: So let me ask counsel and the parties to sign.

MR. STEER: Your Honor, may we just have it shown that it's with prejudice, since it --

THE COURT: It says it in there, doesn't it?

MR. STEER: It's an either/or.

THE COURT: Oh, well, yes. Let me suggest you correct that.

MR. STEER: Correct it and initial it?

THE COURT: Yes.

Once this is filed, I assume Judge Woods will cancel the August 12 conference.

MR. STEER: Your Honor, one thing I'd also like to make clear on the record, that Mr. Samuel Dios, the other plaintiff, will be made aware of his obligation to keep everything confidential.

MR. COOPER: Yes, no problem, Judge.

THE COURT: Is counsel planning to reduce this to a more detailed writing?

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MR. COOPER: Judge, this is the agreement. I think
counsel and I have agreed this is the agreement.

THE COURT: Okay.

MR. COOPER: If they want anything further, we are
happy to execute it. They just have to send it to me. But I
think this is -- these are the material terms of the
agreement.

MR. STEER: I agree, your Honor.

Thank you, your Honor.

THE COURT: Thank you, all. Have a good day.

MR. COOPER: Thank you, your Honor.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Dios et al v. Pasta & Potatoes, Inc., et al, Docket #15-CV-01132-GHW, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature_____

Date: August 18, 2015